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BENJAMIN P. MUSTIAN

August 8, 2006

\*ALSO ADMITTED IN TX

\*\*ALSO ADMITTED IN VA

**VIA HAND DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator

**Public Service Commission of South Carolina**

101 Executive Center Drive

Columbia, South Carolina 29210

8/8/06  
led

SC PUBLIC SERVICE  
COMMISSION

2006 AUG -8 PM 4:02

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RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and five (5) copies of **Applicant's Motion for Order Prohibiting Introduction or Admission of "Rebuttal" Testimony of Dr. James Epting** in the above-referenced matter.

By copy of this letter, I am serving counsel for all parties of record with a copy of same and enclose a certificate of service to that effect.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via my courier. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/amw

Enclosures

cc: Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
Duke K. McCall, Jr., Esquire  
Jacqueline H. Patterson, Esquire  
George K. Lyall, Esquire

TURN DATE: N/A  
FEE: \_\_\_\_\_

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-107-WS**

IN RE: )  
Application of United Utility Companies, )  
Inc. for adjustment of rates and charges )  
and modifications to certain terms )  
and conditions for the provision of )  
water and sewer service. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Applicant's Motion for Order Prohibiting Introduction or Admission of "Rebuttal" Testimony of Dr. James Epting** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

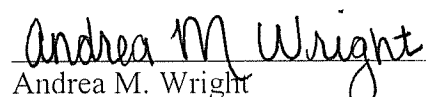
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4573 Coach Hill Dr.  
Greenville, SC 29615

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SC PUBLIC SERVICE  
COMMISSION

  
\_\_\_\_\_  
Andrea M. Wright

Columbia, South Carolina  
This 8<sup>th</sup> day of August, 2006.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2006-107-W/S**

IN RE: )  
 )  
Application of United Utility Companies, )  
Inc. for adjustment of rates and charges )  
and modifications to certain terms )  
and conditions for the provision of )  
water and sewer service. )  
\_\_\_\_\_ )

**MOTION FOR ORDER PROHIBITING  
INTRODUCTION OR ADMISSION OF  
“REBUTTAL” TESTIMONY OF DR.  
JAMES EPTING**

Applicant, United Utility Companies, Inc., (“Applicant” or “UUC”), pursuant to S.C. Code Ann. Regs. R. 103-840 (1976), hereby moves for an order precluding the admission of the “rebuttal” testimony of Dr. James Epting submitted on behalf of North Greenville University (“NGU”), into the record in the above-captioned proceeding. In support thereof, Applicant would respectfully show as follows:

1. NGU was required, under 26 S.C. Code Ann. Regs. 103-869.C (Supp. 2005), to pre-file with this Commission, and serve all parties, any direct testimony it wished to give in the instant docket on or before July 31, 2006. In accordance with the notice issued May 11, 2006, by the Docketing Department of the Commission, such pre-filing and service was permitted to be accomplished by mail, contingent upon the testimony being postmarked on that date.

2. Notwithstanding the foregoing requirements, NGU has, by letter from its counsel dated August 7, 2006, now filed with the Commission and served upon Applicant “rebuttal” testimony of Dr. James Epting which purports to address matters raised in the direct testimonies

of Applicant's witnesses Converse A. Chellis, III, CPA and Lena Sunardio, CPA, which were filed and served by Applicant on July 17, 2006.<sup>1</sup>

3. The provisions of the Commission's Rules of Practice and Procedure specifically authorize the Commission to establish testimony pre-filing and service deadlines to be adhered to by parties of record. *See* R. 103-869.C, *supra*.

4. NGU's failure to timely file and serve the proposed "rebuttal" testimony of its Witness Epting in the instant docket is therefore a violation of the Commission's Rules of Practice and Procedure and state law.

5. Applicant submits that the only appropriate remedy is that NGU be denied the right to present the testimony of its proposed witnesses in this case. The rights of the other parties of record to have NGU comply with the same laws, rules and orders binding upon them cannot be ignored without violating the equal protection and due process rights of such other parties. NGU's right to file direct testimony expired on July 31, 2006 and it should not be permitted to escape its obligation to make timely filing and service of same by mischaracterizing it as "rebuttal" testimony. Applicant would further note that NGU has also previously failed to timely serve the pre-filed direct testimony of its witnesses in this matter as is reflected in Applicant's motion in this docket dated August 3, 2006.

6. Applicant submits that the relief sought hereby is within the inherent power of the Commission to control the procedures employed in cases before it. Moreover, relief of the nature sought herein is available in matters in the courts of this state when a party fails to

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<sup>1</sup> Although NGU's August 7<sup>th</sup> filing is styled "rebuttal testimony", the Applicant would note that the Commission's directives in this matter do not permit a party other than the Applicant to file rebuttal testimony. Moreover, given that the proposed testimony addresses matters raised in the Applicant's direct testimony, it cannot be considered "rebuttal" testimony even if NGU had timely filed and served same.

cooperate in discovery. See Rule 37(b)(2)(B) SCRPC. Accordingly, the same sanction is available to this Commission. See S.C. Code Ann. § 1-23-330(1) (2005). Applicant submits that the pre-filing of testimony under the Commission's rules is a procedure akin to discovery since it informs the parties, in a timely manner prior to hearing, of the nature of another party's case. Accordingly, the "rebuttal" testimony of NGU Witness Epting should be prohibited from being introduced in the instant case. See Order No. 2002-167, Docket No. 2001-504-E (March 7, 2002) (prohibiting DHEC from presenting witness testimony filed after the pre-filing deadline).

WHEREFORE, having fully set forth its motion, Applicant requests that the Commission issue its order denying NGU the right to introduce the "rebuttal" testimony of its Witness Epting in this case and granting Applicant such other and further relief as is just and proper.



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Post Office Box 8416  
Columbia, South Carolina 29202-8416  
803-252-3300  
Attorneys for Applicant

Columbia, South Carolina  
This 8<sup>th</sup> day of August, 2006